

May 10, 2004

TO: Interagency Committee Members and Designees

FROM: Laura Johnson, Director

PREPARED BY: Scott Chapman, Outdoor Grants Manager

SUBJECT: Thurston County ORV Sports Park - Options

In preparation for the May 21, 2004, IAC meeting, this memo is to assist the Board and interested parties in considering issues arising out of the closure of the Thurston County ORV Sports Park. Since the April IAC meeting, the County has rejected the IAC's offer for a mediation process. The County has continued to request a detailed response to its February proposal, but may also be willing to participate in a short term funding approach in order to give legislators and others time to craft a longer-term solution. IAC staff have been involved in extended discussions with user groups suggesting an alternative solution.

This memo is in two parts. Part I outlines and summarizes three major approaches for IAC's consideration of the financial and legal issues related to the Thurston County ORV Sports Park. Part II provides additional information about a possible preferred approach for IAC Board consideration at its May 21 meeting.

To encourage public review and comment, staff is circulating this memo as a discussion draft to the NOVA Advisory Committee and other interested parties, including the County. Based on comments we may receive, it is possible that revisions will be needed before the IAC Board meeting.

Summary

One approach for the IAC would be to re-review the County's earlier proposal for secure funding. Another option, which has been developed by a group of interested ORV users since the April IAC meeting, would fund Park operations for a three year period, with a commitment to seek resolution of longer-term issues. The third approach would decline any further support, and seek final resolution of park closure issues through negotiation or judicial determination.

Assuming affirmative comments are received from the NOVA Advisory Committee and other interested parties, the 'three-year' approach may be the preferred option for consideration at the May 21 IAC meeting. That is, up to \$740,388 in additional NOVA funding would be made available for the Thurston County ORV Sports Park, and previous retainages would be reimbursed. The funds would provide maintenance and enforcement support for up to three years and funding for the capital improvements needed to complete a sound mitigation study, improve fencing and gates, and improve signage at the ORV Park.

The goal of this funding approach is that Thurston County would open the ORV Sports Park for both day-use and events for a minimum of three years. This would offer current use while giving the state, the county, users, and other policymakers time to develop a long-term solution for the operation and management of the ORV Park.

PART I - BACKGROUND AND OVERVIEW OF APPROACHES

Background

In November 2002, Thurston County Commissioners voted to close the Thurston County ORV Sports Park. In an effort to get the ORV Park re-opened, IAC hired a facilitator to work with County staff and develop recommendations. On February 27, 2004, Thurston County Commissioners sent IAC a detailed proposal that identified the conditions under which they would agree to consider reopening the ORV Park. On April 2, 2004, Thurston County's proposal was discussed at the IAC quarterly board meeting.

Based on public testimony, input from the NOVA Advisory Committee, and significant discussion among the IAC Board Members, IAC did not act to approve the County's funding request. Instead, the IAC Board directed staff to:

- 1) Sponsor a mediation process (to be completed within 45 days) that would include representatives from Thurston County, IAC, and ORV user groups.
- 2) If the mediation was not successful, the IAC would begin steps to seek a declaratory judgment on the issues.

On April 7, 2004, IAC sent the County a letter conveying the decisions made at the April 2nd meeting. By letter also dated April 7, the County rejected the mediation opportunity, but indicated its continuing interest in a possible ownership transfer "to a public agency or private organization interested in continuing to operate the sports park".

In the meantime, user groups and other interested parties have pursued other options for resolving the park's closure. Most of these efforts have focused on providing a mixture of short-term funding and long-term policy resolutions. IAC staff has also continued to work with counsel in the Attorney General's office in preparation for judicial procedures if necessary.

Approach 1: Thurston County's February 2004 Proposal

Thurston County's February 2004 proposal for re-opening the ORV Park included seven elements. The elements are summarized as follows:

- 1) IAC to amend its policies to provide for an ongoing guarantee of non-competitive funds for both operations and capital improvements.
- 2) IAC to commit sufficient funds to cover any and all operating expenses, including but not limited to those:
 - (a) Associated with risk management;
 - (b) Required for noise and safety compliance;
 - (c) Needed to repair and replace existing facilities; and
 - (d) Sufficient to ensure a 10% annual ending fund balance in the County's ORV fund.
- 3) IAC to commit funding to implement the capital development improvements outlined in the ORV Park Master Plan¹.
- 4) IAC commit to fund a noise mitigation study and the capital development funds needed to implement the study's recommendations.
- 5) IAC to depreciate the value of capital improvement funded by IAC for purposes of calculating reimbursements required as a result of facility closure or conversion.
- 6) IAC to reimburse the County for all eligible costs for both phase 1 and phase 2 storm water improvements at the ORV Park.
- 7) IAC to reimburse the County the remaining 10% of the IAC commitment for the ORV Park Master Plan, once adopted by the County.

The County has also asked for a determination of the costs or other consequences which might occur should the ORV Park remain closed.

To implement the County's proposal for the next five years, the County was requesting \$1,684,542² in guaranteed noncompetitive funding from the IAC. That request did not include any additional funding that might be needed to implement the findings of the noise mitigation study.

Based on the discussion at the April 2, 2004, IAC meeting, it was clear that there was little support for approving *all* elements of the Thurston County's request. While many issues were identified by testimony or Board discussion, a specific item that raised concerns was the requested guarantee of noncompetitive funding. It was noted that

¹ IAC's policies require governmental applicants to maintain current park and recreation plans to be eligible for most grant programs. According to our records, Thurston County's general park plan eligibility expired in February 2002. In the event the County desires to participate in future IAC grant programs, it will need to submit documentation of its updated or current plans. Specifically for the ORV Sports Park facility, the County has nearly completed a plan, which, upon adoption by the County and IAC acceptance, could presumably allow NOVA program eligibility for this particular facility.

² Included in this amount is \$169,299 in funding that has already been awarded to the County in previous NOVA grants but not reimbursed.

other agencies also have needs for predictable and sustained funding for their NOVA-related facilities' operations. Concern was expressed about equitable treatment and prioritization of scarce NOVA funds.

In the event the IAC Board wishes to pursue this alternative at their May 21 meeting, staff has briefly noted suggested responses to specific policy items in that approach:

Policy Issues:

County Request	Issues
Provide an ongoing guarantee of non-competitive funds.	IAC policies apply to hundreds of sponsors and thousands of projects. It is probably inappropriate to <i>amend</i> policies in the context of one sponsor for one particular facility. However, the Board has the authority to <i>waive</i> a policy depending on specific circumstances.
Guaranteed M&O Funding	Provides a guaranteed fund source for the County, and stability of operations. Does not consider the precedent set or inequity to other potential NOVA M&O fund needs.
5-Year Proposal	Provides stability for park operations and the users at the TC Sports Park, a unique facility in W. WA. Would require IAC commit specific funds for the next five years and an unknown amount in future biennia. IAC lacks authority to commit to funding in future biennia.
Risk Management	Requests that all costs associated with risk management be covered by the state. This can be read as covering all costs of insurance or covering all costs of liability. The latter transfers the risk management costs to the state. State agencies do not have authority to commit to cover others' risks in this manner. It may be appropriate to consider NOVA funding to cover identifiable costs associated with insurance.
Noncompetitive Grants	Currently, NOVA grant funds are awarded through competitive grant processes. This recommendation would not be equitable to those applicants that would be required to compete for funding.
Reimburse County for Stormwater Facility	If the ORV Park were to re-open, it would be appropriate to reimburse the County for the costs already incurred (phase 1) or for future costs as completed (phase 2).
Reimburse County for Master Plan	If the ORV Park were to re-open, it would be appropriate to reimburse the County the final 10%, once the plan was adopted.
Depreciate the Value of Capital Improvements	IAC already has a policy and process in place to declare specific facilities obsolete. IAC staff would support discussion of policy changes to allow depreciation of the value of capital improvements, for this and other facilities. Such policy discussions would need time for public input.

Grant Agreements – Determine Amounts for Cost of Closure	The question is not easily answered. Governing law and WAC codes have been added and/or changed, and the wording in the IAC Project Agreements has been modified and updated. Would need to determine, perhaps through judicial interpretation, the effect of each of those changes on the specific contractual responsibilities related to the funding provided. Secondly, certain aspects of each contract may have reached the end of its useful life, and may be eligible under existing IAC policy to be considered obsolete. This will require discussions between the state and the county to determine the deductible amount. Before applying any deductions or effects of contract interpretation, the total state funding provided since 1978 is approximately \$5 million, for operations as well as capital expenses.
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Based on issues raised in the April IAC meeting as well as the discussion above, staff does not recommend IAC Board adoption of the February 2004 proposal's approach.

Approach 2: Three-Year funding, plus commitment for resolution of long-term issues

Following the April IAC meeting, user representatives from the Northwest Outdoor Coalition and Representative Cary Condotta presented IAC staff with an alternative proposal. The proposal (based on the budget in Thurston County's proposal) would:

- Provide three years of funding for operation and maintenance of the ORV Park;
- Provide funding for fencing and gates, park signage, and a sound mitigation study; and
- Provide funding for Education and Enforcement at the ORV Park.

This approach also involves a commitment by all parties to seek other means of resolving longer-term financial and operational issues, including funding and liability concerns.

Staff has used the materials presented by the user group and in the County's February proposal to identify a possible funding package. Based on our initial review, the approach appears to be fiscally viable, and it addresses many of the County's key issues. It could thus be the basis for discussions, moving forward with the IAC Board's expressed preference for continued dialog aimed at reopening the Sports Park. Although the approach is viable, we also note it raises significant policy issues. To obtain public review and comment, staff has commenced circulating this memo. As additional public comment is received, the proposal and/or the draft recommendation may need additional revision before consideration for IAC adoption on May 21.

This approach is discussed more fully in Part II of this memo.

Approach 3: Full Termination, with Negotiation or Judicial Action as needed to conclude all obligations.

Under this approach, IAC would offer no additional funding support, but instead proceed with the Declaratory Judgment or other judicial action as needed. IAC would instruct its

staff to remain available for negotiation, if possible, to achieve resolution before formal proceedings conclude.

Staff suggests that the IAC Board hold a short executive session with its Assistant Attorney General, in an attorney-client setting, to review this approach in greater detail.

PART II – DISCUSSION OF “THREE YEAR” APPROACH

Summary of Three Year Approach

IAC would provide Thurston County \$740,388 to operate the ORV Park for the 2004, 2005, and 2006 use seasons. This would provide the funding to open the ORV Park for the near-term, thereby providing time for all parties to develop a long-term solution to the ongoing operation and management of the facility. As was heard during the April 2004 IAC meeting, there was strong support for keeping the Thurston County ORV Park open, even if there was only limited support for the entirety of the Thurston County proposal.

Funding Summary

NOVA Funding, Approach 2	
Maintenance & Operation grant	\$535,564
Education & Enforcement grant	\$43,624
Capital grant	\$161,200
Total Funding	\$740,388

Unless otherwise directed, Thurston County would need to seek any additional or future funds through the normal IAC grant processes.

Long-Term Solution(s)

This approach involves commitment to seek other means of resolving the Sports Park issues within three years. Although the long-term solutions are not guaranteed, there is considerable interest by some users and policymakers to pursue this work. We believe these efforts are being pursued in good faith with the goal to address the County's concerns as well as the users'. The County may be willing to participate in some manner under this approach, but the extent of its participation is, understandably, not yet defined. Possible long-term solutions could include discussion of funding from other sources and/or future operations under a private sector model. In any event, long-term solutions will likely involve future legislative action for oversight or statutory changes.

NOVA Program Funding Availability - Changes and Impact

A three-year approach is financially viable if approved at the May 21 IAC meeting. On June 10, 2004, Substitute House Bill 2489 takes effect. As of that date, all NOVA funding that has not been assigned to specific projects will be distributed according to

the new funding formula in RCW 46.09.170 (2)(d). Based on that new distribution formula, the funding available for ORV recreation facilities will be reduced by \$800,000 to \$1,100,000 in this biennium³. Current law provides a window of opportunity to fund the Thurston County ORV Park with ORV dollars without significant impact to the NOVA Program if funding is approved before the bill takes effect.

Since the “three-year” proposal uses NOVA funding that would otherwise be distributed under the new formula, a decision to fund the Thurston County facility impacts all categories of the NOVA program. Removing those funds from availability for distribution under the new formula means less funding will be available for other NOVA categories this biennium. We estimate the impact of funding this “three-year” proposal to be approximately \$127,000 less for other NOVA categories for the remainder of the biennium.

Policy Issues

In addition to financial impacts, approval of this approach for the Sports Park’s support has implications for three current NOVA program policies:

- The current grant limit for Maintenance & Operations grants for Off-Road Vehicle projects is \$100,000 a year; this approach amounts to approximately \$178,000 a year.
- NOVA grants are awarded through a competitive grant process; this approach provides funding for capital, M&O, and E&E funding on a noncompetitive basis (one time only).
- The NOVA program requires agencies to have planning eligibility; the County does not have current planning eligibility⁴.

RECOMMENDATION

After review, IAC staff believes this alternative merits consideration and public review. If supported by the NOVA Advisory Committee and others, staff would recommend the IAC Board consider approval of the proposal.

To implement the funding package, Thurston County would provide general application information⁵ for each project and IAC would prepare four separate project agreements with the County. The budget details are outlined in Attachment 1.

Proposed Project Funding – Four Project Agreements

1. Maintenance and Operation Funding

The first proposed grant would provide the County with a new ORV maintenance grant of \$535,564 to operate and maintain the ORV Park for three years (2004-2006), as outlined in the attached budget proposal. The project would include funding for ORV

³ Over time, additional funds for this sub-category of NOVA will be available under the provisions of HB 2919, which raised the ORV permit fee from \$5 to \$18/yr.

⁴ See Footnote 1.

⁵ As outlined in IAC Manual 5n, or in the PRISM application form.

Park staff, extra personnel, County management support, insurance costs, non-personal operational costs, and vandalism repair. Special conditions are:

- Thurston County will submit a summary status report to the IAC by November 1st of each year that includes:
 - Expenditures and revenues,
 - Use figures for both day use and events, and
 - A status report discussing the operation of the park and identifying any issues or concerns regarding the operation of the facility.
- NOVA funding will be limited to the amounts identified in the budget proposal (attached) unless changes are agreed to in writing by IAC.
- IAC Board would reserve the right to terminate the Project Agreement based on advice from the NOVA Advisory Committee after consideration of public input and the status report submitted by the County. In the event of termination by IAC, IAC would commit to assisting Thurston County with resolving all conversion issues.

2. Education and Enforcement Funding

The second proposed grant would provide the County with an E&E grant of \$43,624 to provide an additional education and law enforcement presence at the ORV Park. The E&E funding would be used to encourage responsible recreational behaviors through in-field contacts with ORV users and enforce ORV laws. Special conditions are:

- Thurston County will submit a summary status report to the IAC by November 1st of each year that includes:
 - Expenditures.
 - A status report identifying the monthly enforcement and education activities completed.
- NOVA funding will be limited to the amounts identified in the budget proposal (attached) unless changes are agreed to in writing by IAC.
- IAC Board would reserve the right to terminate the Project Agreement based on advice from the NOVA Advisory Committee after consideration of public input and the status report submitted by the County. In the event of termination by IAC, IAC would commit to assisting Thurston County with resolving all conversion issues.

3. Sound Mitigation Study

The third proposed grant would provide the County with ORV planning funds of \$30,000 to complete a sound mitigation study. To receive future NOVA funding to implement any recommendations of the sound mitigation study, Thurston County would need to submit a new NOVA grant application through the standard competitive grant process.

4. Fencing, Gates, and Park Signage

The final proposed grant would provide the County with an ORV capital development grant of \$161,200 to install fencing, gates, and park signage needed to open and properly manage the ORV Park. Special conditions are:

- For the purposes of this grant, that the fencing, gates, and signs have a life expectancy of 12 years from the date of the final IAC reimbursement.
- That Thurston County would be required to reimburse the NOVA ORV program account, based on a pro-ratio formula, should the facility become unavailable for public ORV recreation within 12 years from the date of the final IAC reimbursement.

Additional Conditions and Agreements

If Thurston County adopts its ORV Master Plan and opens the ORV Park for the 2004-6 use seasons, IAC would also need to conclude financing under former grants that have been in abeyance since the November 2002 closure. Specifically, IAC would agree to:

- Release payments for the storm water detention facility and the ORV Park Master Plan. (Note that there is no existing requirement that this reimbursement be used for ORV purposes. Therefore, the County could choose to use the \$126,457 to pay for soil treatments, cover any unexpected expenses, pay future unknown liability insurance premiums, or use it for other County purposes.)
- Work with the County to review the facilities developed at the ORV Park and determine what facilities could or should be declared obsolete, pursuant to current policies that allow IAC to declare facilities obsolete.
- Develop a life expectancy and depreciation policy for both the new and existing facilities constructed at the ORV Park with NOVA funding assistance.
- Reimburse the additional costs (up to \$42,893) of the storm water facility if finished by the County.
- Modify the wording in new capital development Project Agreements to allow the County to repay (on a pro-rated basis) grants should the ORV Park be permanently closed before the facilities are determined to be obsolete.
- Commit to working with the County and all parties (with legislative changes as needed) to find long-term solutions or clarify long-term closure requirements.

Discussion Recommendation - Pros & Cons

PROS	CONS
Provides stable, non-competitive funding to open the ORV Park for both events and day-use activities for three years.	Policy & fiscal implications. Reduces the amount of funding available for other Education and Enforcement, Nonmotorized, and Nonhighway Road projects.
Gives the County and the state a three-year window of opportunity to develop a long-term solution for the operation of the ORV Park.	No guarantee that an acceptable solution will be developed or approved.
Provides an opportunity to expend ORV category funding that would otherwise be redistributed when SHB2489 takes	No guarantee that the County will decide to open the ORV Park. Some users may prefer distribution to

effect.	take place under SHB2489.
Re-opens the only public ORV facility located in western Washington.	ORV Park could be closed again in three years or less.

Variations within the Approach

- 1) Fund only the operational costs; require the County to apply for grants in October 2004 to seek funding for the sound mitigation study and the signing, fencing, and gate improvements.
- 2) Offer only \$300,000 in Maintenance and Operation funding support to reflect the grant limits approved in the IAC's 2003-2008 NOVA Plan.

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Comments and suggestions are welcome, and will receive fullest consideration if received by not later than Monday, May 17.

To Comment:

Please forward all comments to Scott Chapman, at:

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Attachment 1

Thurston County ORV Park - Proposed three-year budget proposal

Existing Project Funding

Storm Water Project	121,457	IAC will reimburse these funds if the ORV Park is opened.
Master Plan	5,000	IAC will reimburse these funds if the County approves the Master Plan.
	126,457	Total reimbursements

Operation and Maintenance Costs and Revenues

<u>Expenditures:</u>	2004	2005	2006
Wages/Benefits: 1.5 Full Time Employees ORV Park Staff	57,821	72,681	76,133
Extra Help, Operations & Concessions	43,482	45,547	47,711
Extra Help Law Enforcement	13,872	14,531	15,221
Management Support	25,000	25,625	26,266
Insurance Costs	12,000	57,500	66,125
All Other Non-personal ORV Park Operations Costs	132,833	136,154	139,558
Vandalism Repair	53,000		
Total Expenditures:	338,008	352,038	371,014

Revenues:

Fund Balance	78,378			
IAC Grants in Support of Operations:	169,709	192,893	172,962	535,564
E&E Grant Enforcement & Education	13,872	14,531	15,221	43,624
Enterprise Revenues: Fees, Rental, Sales:	74,649	143,699	181,779	
Interest Earnings	1,400	915	1,052	
Total Revenues:	338,008	352,038	371,014	

Capital Funding:

Old Funding

\$42,893 Complete Storm Water Facility - Currently under contract with IAC

New Capital Development Funding

\$30,000 Sound Mitigation Study

\$122,000 Fencing and gates

\$9,200 On-site signage

\$161,200 One-time Capital Grant

Total NOVA Funding Support - Capital and M&O **\$740,388**